

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51

To the Commission:

INITIAL COMMENTS OF CONTRERRA ULTRA BROADBAND, LLC

Contrerra Ultra Broadband, LLC (“Contrerra” or “Company”), acting pursuant to Section 1.415(b) of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, 47 C.F.R. § 1.415(b), hereby respectfully submits its initial comments in connection with the Notice of Proposed Rulemaking, released May 20, 2010, FCC 10-83, to implement the National Broadband Plan’s vision of improving and modernizing the universal service programs.¹

I. INTRODUCTION AND BACKGROUND – CONTRERRA’S INTERESTS

Contrerra welcomes the opportunity to comment on selected proposals in the NPRM. Contrerra is a national, facilities-based, FCC common carrier providing high quality, high capacity backhaul and wide area telecommunications services for school districts, health care providers, select enterprises and wireless mobility carriers located in rural and exurban America. The Company primarily utilizes Part 101 FCC licensed microwave frequencies to augment and

¹ In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan For Our Future, GN Docket No. 09-51, Notice of Proposed Rulemaking, FCC 10-83, released May 20, 2009 (“NPRM”). These Initial Comments are timely filed in accordance with the notice published in the Federal Register on June 9, 2010. 75 Fed Reg 32719 (June 9, 2010).

extend existing fiber optic backbones and rings in locations where the economics of deploying fixed-line media for middle and last-mile broadband connectivity are unfavorable.

II. CONTERRA'S COMMENTS

Conterra hereby submits the following comments on certain of the substantive proposals in the NPRM:

1. Section II. B. 1. - Elimination of Technology Plans for Priority 1 Services

Conterra would prefer that the Technology Plan ("Tech Plan") process either be eliminated completely or left as it is. All school districts can benefit from the planning process, in that they must assure that the **Priority 1** services requested are appropriate for the **Priority 2** technology specified. Districts engaged in larger procurements, as the Commission notes in its example, those spending in excess of \$1 million for telecommunications services and technology, generally fall under state purchasing requirements that mandate extensive planning and formal purchasing procedures. Districts engaged in smaller procurements, which the Commission proposes to exempt from the Tech Plan requirement for Priority 1 services, may well not meet the state requirements for technology planning and would not be exempt. However, the burden of the planning process weighs most heavily on these smaller procurement districts. Requiring the applicants with typically the least resources to produce a full Tech Plan, while exempting those applicants best able to afford it, seems counter intuitive.

Further, the Tech Plan approval process is supposed to assure the alignment of needs and budgets as well as potential availability of services; but Conterra still sees districts requesting absurd amounts of bandwidth categorized as both a Telecommunications Service and Internet Access. Removing the Tech Plan requirement for Priority 1 services will not, in and of itself, lead to overbuying and waste as this is already occurring, even with Tech Plan requirements.

Finally, the Commission proposes retaining the Tech Plan requirement for Priority 2 services. Applicants will still need to develop a plan under some sort of guidance to insure the Priority 1 and Priority 2 requirements are congruent. In Conterra's view, there would be no significant reduction in paperwork and no reduction in overbuying under this scheme.

2. Section II. B. 2. - Competitive Bidding Process

The Commission proposes the removal of the 470 Form requirement and 28-day waiting period for Priority 1 services in cases where local or state processes exist. Conterra has several objections to this proposal.

The Commission says it is concerned that the Form 470 is "too complex." Most of the errors Conterra has seen in its applicants' Form 470s have been in the calculation of the discount percentages and the determination of eligible versus ineligible entities, and in the processes that need to be followed by Educational Service Agencies. Conterra submits that simplifying and clarifying these procedures would be far more effective than doing away with the process completely, which Conterra believes would be potentially disastrous.

The first issue here is fair and equal access to the bid information. There is no uniformity in state and local procurement posting requirements across the U.S. and, therefore, no way to ensure that a service provider located out of the town, county or state where the service is bid has fair access to the information. Conterra is aware of bid windows running from 5 to 45 days across the U.S. Anything less than 30 days is a competitive barrier to non-tariff service providers, as there would be no time to adequately survey the bidder requirements and produce a responsive bid. Finally, elimination of the current notice requirements would be a "windfall" for "bid scraping" entities, private companies that purport to collect bid information and sell it to

subscribers in a timely fashion, thereby allowing companies like Conterra to compete on a national scale. It has been our experience that these companies provide less than satisfactory services for which they charge a premium.

Conterra repeatedly sees requirements for bid bonds and other irrelevant requirements in bid requests for services to be delivered on a turnkey basis with no ownership rights to tangible assets conveying to the requesting party. Removing the Federal posting requirement will exacerbate this problem, as there will no longer be a second set of eyes on the process. Perhaps most importantly, this proposed rule change would actually lead to greater “fraud, waste and abuse” of the competitive bidding system by potentially allowing less than open and transparent bidding of services at local, county and state levels. It could certainly handicap bidders that are not “local” but can still provide services that would meet all specifications at a competitive price. The 28-day requirement allows bidders to make appropriate comments and concerns on the request with a chance to amend the Terms and Conditions and/or service specifications and, accordingly, optimize their bid proposals within the 28-day bid window.

The Form 470 process allows national transparency into each applicant’s procurement of services. Removal of the Form 470 process would have the effect of providing less competition, open the door to cronyism and other “good old boy” procurement schemes that have tainted local contract bidding over the years and, accordingly, stifle technology and competitive bidding.

Finally, the Commission does not address the issue of enforcement of a revised E-rate Program rule in this regard. If there is no Form 470 and all procurement is in effect outsourced to the states, counties or cities, how will the FCC assure that these processes are adequate to insure compliance?

3. Section II. B. 2. - Fair and Open Competitive Bidding Rule

Conterra is a bit perplexed by this proposal. In the preceding section the Commission proposes to ‘simplify’ the process for applicants by removing the requirements for a Form 470 for Priority 1 services in certain cases, but in this section now seems to propose all applicants conduct a full procurement under applicable state or local law. We fail to see how this is better than a Form 470 for Priority 1 services for all the reasons outlined above, especially what appears to be the transference of responsibility for competitive procurement to entities other than USAC.

The Commission further defines a series of actions that would be forbidden under the new rules. While many of these are simply good business practices, we wonder how these may be interpreted. As was noted in the July 5, 2010 issue of *E-rate Forum Weekly*, “FCC guidance tends to find its way into strict USAC procedures.”² It would be a shame if interpretation precluded E-Rate Program service providers with contracts in place from joining every other business in a given community in contributing to the district’s scholarship fund, or the arts program, or the Title IX sports fund.

Finally, this revised rule could actually lead to greater “fraud, waste and abuse” of the competitive bidding system by potentially allowing less than open and transparent bidding of services at local, county and state levels. It could certainly handicap bidders that are not “local” but can still provide services that would meet all specifications. The 28-day requirement allows bidders to make appropriate comments and concerns on the RFP with a chance to amend the Terms and Conditions and /or service specifications within the 28-day bid window.

² E-Rate Central Forum News Vol. 6, No. 27, Page 2

4. Section II. B. 3. - Application Process Streamlining

The Commission proposes to make electronic filing of Forms 470 and 471 mandatory. Conterra applauds this concept, but we note that in the case of Priority 1 network delivery the amount of supporting documentation currently required by USAC as part of the Item 21 and subsequent PIA processes is daunting. We are concerned that USAC will not receive an adequate budget to build an electronic filing system capable of dealing with this documentation in an efficient manner.

5. Section III. B. 1. - Wireless Services Outside of School

In general Conterra favors the possibility of allowing E-Rate to support off-premises educational service to mobile devices. Conterra is acutely aware of the need for this type of service through our delivery of service to some of the most rural parts of the United States, such as the Navajo Nation. Some students there face bus rides to and from school well in excess of one hour, and far away from any possibility of traditional Internet Access. That said, given that E-Rate funding is capped, Conterra is concerned as to how this additional service would be funded. The Company is also concerned as to how the unauthorized use of the funded connectivity will be policed.

6. Section III. B. 2. - Expanded Access to Low-Cost Fiber

The use of **existing** state, regional and/or local networks for transport by E-rate eligible entities may be worth investigation to see if they can indeed meet the technical and operational requirements set forth in Part 54 for “commercially available” services and if they are offered on a commercially neutral basis. Conterra would oppose using E-rate funds to **build** these types of

networks as again; Conterra feels this could lead to fraud, waste and abuse of the limited funds available. Conterra would support the reversion to the earlier rule allowing the lease of dark fiber.

7. Section III. B. 4 - Targeting Support for Broadband Services

Conterra supports giving IP-based broadband services a higher priority than circuit switched services. As one of the more active broadband suppliers in rural America, Conterra knows that the use of IP-based broadband is expanding because it provides a more cost-effective solution to applicants than a 'mixed bag' of circuit and packet-switched services. Applicants can consolidate the communications transport requirements on a single platform, allowing more efficient use of limited resources.

8. Section IV. B. 2. - Indexing the Annual Funding Cap to Inflation

Conterra wholeheartedly supports indexing the funding cap to the CPI.

III. CONCLUSION

Conterra Ultra Broadband would like to thank the Commission for instituting this wide-ranging review of what we feel is one of the most important programs in existence for bridging the digital divide and bringing the benefits of broadband communications to America's future,

the children in our schools. Conterra feels that the E-rate program should be strengthened and, to the extent possible, broadened to insure no school, library or district, no matter how remote, is left out of the digital future.

Respectfully submitted,

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